

U.S. Department of Labor

Office of Administrative Law Judges
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In the matter of

Brent Harris

Claimant

v.

Dated: April 26, 2001

Case No. 1998 LHC 0006

Forman Brothers

Employer

and

American Mutual Insurance Company

Carrier

and

Director, Office of Workers'

Compensation Programs

Party in Interest

SUPPLEMENTAL DECISION AND ORDER

APPROVING ATTORNEY'S FEE

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901, et seq., (the "Act"), and the regulations promulgated thereunder. On April 24, 2001, I received the parties' proposed settlement agreement which consists of a Joint Petition for the Approval of a Settlement under LHWCA 908(i).

The parties stipulate as follows:

1. On or about February 9, 1979, the Claimant was employed by Forman Brothers, Inc. as a helper delivery person. During the course of his employment, the Claimant sustained certain injuries to his back on February 9, 1979, which arose out of and occurred during the performance of his duties as a helper for Forman Brothers, Inc.
2. At the time of the alleged accident, the Claimant's Average Weekly Wage was \$135.27, revealing a compensation rate of \$99.20.
3. The Employer and the previous Carrier, American Mutual Insurance Company, paid the Claimant compensation benefits from February 10, 1979 to April 23, 1979 at the rate of \$99.20 per week.
4. The Claimant has recently re-activated his claim and efforts have been made both by the Claimant and the Employer and Carrier to locate and reconstruct the file at the Office of Workers' Compensation, 1200 Upshur Street, N.W., Washington, D.C. Both the Claimant and the Employer and current Third-Party Administrator have provided the Office of Administrative Law Judges with all of the file documents from the Agency as a result of prior Pre-Trial proceedings.
5. The Claimant has alleged that he continues to be disabled and seeks the payment of disability benefits and medical expenses. The Employer and Third-Party Administrator contend that they are not legally responsible for any additional compensation benefits beyond those previously paid and also have contended that they are not responsible

for the Claimant's continuing medical care.

6. The parties have engaged in continuous discussions concerning the resolution of this case and have agreed to a settlement. Considering all of the circumstances outlined herein, the Employer and Third-Party Administrator have agreed to pay and the Claimant has agreed to accept a lump-sum settlement in the amount of SIXTY-TWO THOUSAND, FIVE HUNDRED (\$62,500.00) DOLLARS.

7. All settling parties have agreed that the Employer and Third-Party Administrator's obligation to pay any past due medical expenses for treatment related to the injuries allegedly sustained in the accident, as well as any reasonable and necessary medical expenses that may be incurred in the future as a result of the injuries allegedly sustained in the accident are completely released and forgiven by the terms of this settlement, and will remain the liability and obligation of the Claimant. The Claimant agrees to and intends to pay all medical expenses out of the proceeds of this settlement.

8. The Claimant accepts the said agreement and the aforesaid payment in final compromise and settlement of any and all claims which the Claimant, his or her personal representative, dependents, spouse and children or any other parties who might become beneficiaries under the Longshoremen' and Harbor Workers' Compensation Act, might now or could hereafter have under the provisions of the said Law, arising out of the aforesaid injury or disablement or the disability resulting therefrom, and does hereby, on behalf of himself or herself, and all of said other parties, release and forever discharges the Employer and Insurer (Third-Party Administrator), their personal representatives, heirs, successors and assigns from all other claims of whatsoever kind which might accord hereafter arise under the said Law from the said injury, disablement or injury.

9. The parties believe that the said agreement, in view of all the circumstances, is in the best interests of the Claimant and should be approved.

10. The Claimant has been advised of his rights under the Longshoremen' and Harbor Workers' Compensation Act, and is fully aware that the approval of the said settlement by the Office of Administrative Law Judges will discharge the Employer and Third-Party Administrator from any compensation payments and medical expenses.

11. Attorney Michael Z.C. Okpala has represented the Claimant in this proceeding and has counseled him in this case. Attorney Okpala has represented the Claimant before the Office of Administrative Law Judges, and has continuously conferred with the Employer and Third-Party Administrator and their counsel in order to arrive at the agreed settlement. Accordingly, attorney Michael Z.C. Okpala is requesting an attorney's fee in the amount of \$ 12,500 . C20 and the payment of an outstanding medical bill in the amount of \$1,860.00. The Claimant understands that this fee and the payment of the medical bill in the amount of \$1,860.00 are to be deducted from the said settlement, and has agreed that the fee for Mr. Okpala and the payment of the medical bill in the amount of \$1,860.00 is fair and reasonable.

Although there is no dispute among the parties as to the attorney's fee, Counsel are advised that approval of an attorney's fee is governed by 33 USC § 928. The regulations require that a fee **application must be supported by:**

- (1) a **complete statement of the extent and character** of the necessary work performed;
- (2) an **hourly breakdown** of the time spent in the particular activity;
- (3) a **description of the professional status** of each person performing the work, e.g., attorney, paralegal, law clerk, or other legal assistant as opposed to their actual given name; and
- (4) the **normal billing rate** for such person, and the **hours devoted** by each such person to each category of work.

See Nacirema Operating Co. v. Lynn, 577 F.2d 852 (3d Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979); *Newport News Shipbuilding & Dry Dock Co. v. Graham*, 573 F.2d 167 (4th Cir. 1976), *cert. denied*, 439 U.S. 979 (1978); *Ayers Steamship Co. v. Bryant*, 544 F.2d 812 (5th Cir. 1977); *Matthews v. Walter*, 512 F.2d 941 (D.C. Cir. 1975); *Forlong v. American Sec. & Trust Co.*, 21 BRBS 155 (1988).

Upon careful review of the documents provided, and upon the parties representation that the agreed stipulation is equitable and adequate and was not procured by duress, I accept the stipulation and make the following findings and conclusions:

FINDINGS OF FACT And CONCLUSIONS OF LAW

1. On February 9, 1979, the Employee, Brent Harris, while employed by the employer, Forman Brothers Inc., sustained injuries to his back.
2. The liability of the employer for compensation under the Longshore and Harbor Workers' Act was with the Employer, Forman Brothers Inc, and its insurance carrier, Helmsman Management Services Inc.is established by the record.
3. As a result of said injury, the Employee incurred medical expenses and wage loss for which benefits have been paid.
4. The parties have agreed on the pertinent issues and desire to settle the claim for a lump sum payment to the Employee of \$62, 500.00.

Now, therefore under 33 U.S.C. Section 908(i), the settlement is approved in part, and the terms of settlement are **ordered** upon the Findings and Conclusions set forth above. However, the record is left open twenty (20) days to permit Counsel to file a petition for attorneys fees under 33 USC § 928.

Daniel F. Solomon
Administrative Law Judge